

**ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE**

May 4, 2021

3:06 p.m.

DRAFT

MEMBERS PRESENT

Representative Jonathan Kreiss-Tomkins, Chair
Representative Matt Claman, Vice Chair
Representative Geran Tarr
Representative Andi Story
Representative Sarah Vance
Representative James Kaufman
Representative David Eastman

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 163

"An Act relating to vehicle title applications."

- MOVED HB 163 OUT OF COMMITTEE

CS FOR SENATE BILL NO. 28(STA)

"An Act establishing April 24 of each year as Vic Fischer and Jack Coghill Constitution of the State of Alaska Day; and providing for an effective date."

- MOVED HCS CSSB 28(STA) OUT OF COMMITTEE

HOUSE JOINT RESOLUTION NO. 7

Proposing amendments to the Constitution of the State of Alaska relating to the Alaska permanent fund, appropriations from the permanent fund, and the permanent fund dividend.

- HEARD & HELD

HOUSE BILL NO. 73

"An Act relating to use of income of the Alaska permanent fund; relating to the amount of the permanent fund dividend; relating to the duties of the commissioner of revenue; relating to an advisory vote on the permanent fund; providing for an effective

date by repealing the effective date of sec. 8, ch. 16, SLA 2018; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 124

"An Act relating to filling a vacancy in the legislature by appointment."

- HEARD & HELD

HOUSE BILL NO. 142

"An Act relating to eligibility for the permanent fund dividend."

- HEARD & HELD

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 5

"An Act relating to sexual abuse of a minor; relating to sexual assault; relating to the code of military justice; relating to consent; relating to the testing of sexual assault examination kits; and providing for an effective date."

- MOVED CSSSHB 5 (STA) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 163

SHORT TITLE: FORM OF SIGNATURE ON VEHICLE TITLE

SPONSOR(S): REPRESENTATIVE(S) SCHRAGE

04/05/21	(H)	READ THE FIRST TIME - REFERRALS
04/05/21	(H)	CRA, STA
04/13/21	(H)	CRA AT 8:00 AM BARNES 124
04/13/21	(H)	Heard & Held
04/13/21	(H)	MINUTE(CRA)
04/15/21	(H)	CRA AT 8:00 AM BARNES 124
04/15/21	(H)	Moved HB 163 Out of Committee
04/15/21	(H)	MINUTE(CRA)
04/16/21	(H)	CRA RPT 6DP
04/16/21	(H)	DP: MCCABE, PRAX, MCCARTY, DRUMMOND, SCHRAGE, HANNAN
04/27/21	(H)	STA AT 3:00 PM GRUENBERG 120
04/27/21	(H)	Heard & Held
04/27/21	(H)	MINUTE(STA)
04/29/21	(H)	STA AT 3:00 PM GRUENBERG 120
04/29/21	(H)	Heard & Held

04/29/21 (H) MINUTE (STA)
05/04/21 (H) STA AT 3:00 PM GRUENBERG 120

BILL: SB 28

SHORT TITLE: EST. APRIL 24 ALASKA CONSTITUTION DAY

SPONSOR(s): SENATOR(s) BEGICH

01/22/21 (S) PREFILE RELEASED 1/8/21
01/22/21 (S) READ THE FIRST TIME - REFERRALS
01/22/21 (S) STA
03/25/21 (S) STA AT 3:30 PM BUTROVICH 205
03/25/21 (S) Heard & Held
03/25/21 (S) MINUTE (STA)
04/22/21 (S) STA AT 3:30 PM BUTROVICH 205
04/22/21 (S) Moved CSSB 28 (STA) Out of Committee
04/22/21 (S) MINUTE (STA)
04/23/21 (S) STA RPT CS 2DP 1NR 1AM SAME TITLE
04/23/21 (S) NR: SHOWER
04/23/21 (S) DP: HOLLAND, KAWASAKI
04/23/21 (S) AM: COSTELLO
04/23/21 (S) TRANSMITTED TO (H)
04/23/21 (S) VERSION: CSSB 28 (STA)
04/26/21 (H) READ THE FIRST TIME - REFERRALS
04/26/21 (H) STA
05/04/21 (H) STA AT 3:00 PM GRUENBERG 120

BILL: HJR 7

SHORT TITLE: CONST. AM: PERM FUND & PFDS

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

02/18/21 (H) READ THE FIRST TIME - REFERRALS
02/18/21 (H) STA, JUD, FIN
04/20/21 (H) STA AT 3:00 PM GRUENBERG 120
04/20/21 (H) Heard & Held
04/20/21 (H) MINUTE (STA)
05/04/21 (H) STA AT 3:00 PM GRUENBERG 120

BILL: HB 73

SHORT TITLE: PERM FUND; ADVISORY VOTE

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

02/18/21 (H) READ THE FIRST TIME - REFERRALS
02/18/21 (H) STA, JUD, FIN
04/20/21 (H) STA AT 3:00 PM GRUENBERG 120
04/20/21 (H) Heard & Held
04/20/21 (H) MINUTE (STA)
05/04/21 (H) STA AT 3:00 PM GRUENBERG 120

BILL: HB 124

SHORT TITLE: FILLING VACANCY IN LEGISLATURE

SPONSOR(s): CARPENTER

03/03/21	(H)	READ THE FIRST TIME - REFERRALS
03/03/21	(H)	STA, JUD
04/24/21	(H)	STA AT 3:00 PM GRUENBERG 120
04/24/21	(H)	-- MEETING CANCELED --
05/04/21	(H)	STA AT 3:00 PM GRUENBERG 120

BILL: HB 142

SHORT TITLE: PFD ELIGIBILITY

SPONSOR(s): MCCARTY

03/20/21	(H)	READ THE FIRST TIME - REFERRALS
03/20/21	(H)	STA, JUD, FIN
04/09/21	(H)	STA REFERRAL MOVED TO AFTER JUD
04/09/21	(H)	BILL REPRINTED
04/21/21	(H)	JUD AT 1:00 PM GRUENBERG 120
04/21/21	(H)	Heard & Held
04/21/21	(H)	MINUTE(JUD)
04/26/21	(H)	JUD AT 1:00 PM GRUENBERG 120
04/26/21	(H)	Moved CSHB 142(JUD) Out of Committee
04/26/21	(H)	MINUTE(JUD)
04/28/21	(H)	JUD RPT CS(JUD) NT 3DP 2NR 1AM
04/28/21	(H)	DP: SNYDER, KREISS-TOMKINS, CLAMAN
04/28/21	(H)	NR: EASTMAN, DRUMMOND
04/28/21	(H)	AM: VANCE
04/29/21	(H)	STA AT 3:00 PM GRUENBERG 120
04/29/21	(H)	Heard & Held
04/29/21	(H)	MINUTE(STA)
05/04/21	(H)	STA AT 3:00 PM GRUENBERG 120

BILL: HB 5

SHORT TITLE: SEXUAL ASSAULT; DEF. OF "CONSENT"

SPONSOR(s): TARR

02/18/21	(H)	PREFILE RELEASED 1/8/21
02/18/21	(H)	READ THE FIRST TIME - REFERRALS
02/18/21	(H)	STA, JUD
03/26/21	(H)	SPONSOR SUBSTITUTE INTRODUCED
03/26/21	(H)	READ THE FIRST TIME - REFERRALS
03/26/21	(H)	STA, JUD
03/27/21	(H)	STA AT 1:00 PM GRUENBERG 120
03/27/21	(H)	Heard & Held
03/27/21	(H)	MINUTE(STA)

04/13/21	(H)	STA AT 3:00 PM GRUENBERG 120
04/13/21	(H)	Heard & Held
04/13/21	(H)	MINUTE(STA)
04/20/21	(H)	STA AT 3:00 PM GRUENBERG 120
04/20/21	(H)	Heard & Held
04/20/21	(H)	MINUTE(STA)
04/27/21	(H)	STA AT 3:00 PM GRUENBERG 120
04/27/21	(H)	Heard & Held
04/27/21	(H)	MINUTE(STA)
04/29/21	(H)	STA AT 3:00 PM GRUENBERG 120
04/29/21	(H)	Scheduled but Not Heard
05/04/21	(H)	STA AT 3:00 PM GRUENBERG 120

WITNESS REGISTER

SENATOR TOM BEGICH

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Introduced SB 28, as the prime sponsor.

VICTOR FISHER

Anchorage, Alaska

POSITION STATEMENT: Provided invited testimony during the hearing on SB 28.

BERT HOUGHTALING

Big Lake, Alaska

POSITION STATEMENT: Testified in opposition to HJR 7.

ADAM HYKES

Homer, Alaska

POSITION STATEMENT: Testified on HB 73.

REPRESENTATIVE BEN CARPENTER

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Introduced HB 124, as the prime sponsor.

RICHARD BEST, Staff

Representative Ben Carpenter

Juneau, Alaska

POSITION STATEMENT: Provided a sectional analysis of HB 124 on behalf of Representative Carpenter, prime sponsor.

MEGAN WALLACE, Director

Legislative Legal Services

Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 124.

REPRESENTATIVE KEN MCCARTY
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Provided introductory remarks during the hearing on HB 142, as the prime sponsor.

BERT HOUGHTALING
Big Lake, Alaska

POSITION STATEMENT: Testified during the hearing on HB 142.

NOLAN HEATH
Eagle River, Alaska

POSITION STATEMENT: Testified during the hearing on HB 142.

BOBBI SCHERRER, Appeals Manager
Permanent Fund Dividend Division
Department of Revenue
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 142.

EMILY NAUMAN, Deputy Director
Office of the Director
Legislative Legal Services
Legislative Affairs Agency

POSITION STATEMENT: Answered questions during the hearing on HB 142.

LATRICE WILLIAMS
Eagle River, Alaska

POSITION STATEMENT: Testified on HB 142.

JAMES STINSON, Director
Office of Public Advocacy
Department of Administration
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 5.

CLAIRE RADFORD, Attorney
Legislative Legal Services
Legislative Affairs Agency
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 5.

JOHN SKIDMORE, Deputy Attorney General
Office of the Attorney General
Department of Law
City & State

POSITION STATEMENT: Answered questions during the hearing on HB 5.

ACTION NARRATIVE

[3:06:06 PM](#)

CHAIR JONATHAN KREISS-TOMKINS called the House State Affairs Standing Committee meeting to order at 3:06 p.m. Representatives Story, Claman, Vance, Kaufman, and Kreiss-Tomkins were present at the call to order. Representatives Eastman and Tarr arrived as the meeting was in progress.

^#hb163

HB 163-FORM OF SIGNATURE ON VEHICLE TITLE

[3:06:59 PM](#)

CHAIR KREISS-TOMKINS announced that the first order of business would be HOUSE BILL NO. 163, "An Act relating to vehicle title applications."

CHAIR KREISS-TOMKINS opened public testimony. After ascertaining that no one wished to testify, he closed public testimony.

[3:07:43 PM](#)

REPRESENTATIVE CLAMAN moved to report HB 163 out of committee with individual recommendations and the accompanying fiscal notes. Without objection, HB 163 was moved from the House State Affairs Standing Committee.

^#sb28

SB 28-EST. APRIL 24 ALASKA CONSTITUTION DAY

[3:08:09 PM](#)

CHAIR KREISS-TOMKINS announced that the next order of business would be SENATE BILL NO. 28, "An Act establishing April 24 of each year as Vic Fischer and Jack Coghill Constitution of the State of Alaska Day; and providing for an effective date." [before the committee was CSSB 28(STA).]

3:08:30 PM

SENATOR TOM BEGICH, Alaska State Legislature, prime sponsor, introduced SB 28. He informed the committee that the proposed legislation would establish "Alaska Constitution Day," further noting that the bill was composed of only two sections. Section 1 denoted April 24 as a commemorated holiday and Section 2 established an effective date of July 1, 2021. He presented the sponsor statement [included in the committee packet, which read as follows [original punctuation provided]:

On April 24, 1956, the citizens of Alaska ratified the Constitution of the State of Alaska, "guaranteeing that the individual will always be in-charge," and enshrining our State's [sic] values of individual freedom, local control, and personal autonomy at the core of our Statehood. The purpose of our Constitution was to, "transmit to succeeding generations our heritage of political, civil, and religious liberty within the United of States."

Over the past 65 years, the laws and policies of our state have remained relevant and true. Those 55 delegates, so long ago, provided a visionary template for guided governance that has served this state well. Now is the time to recognize the persistence of our Constitution by establishing an annual reminder and celebration of the continuity of our state's values.

Senate Bill 28 provides a bridge from the past to the future by establishing the Vic Fischer and Jack Coghill Constitution of the State of Alaska Day. If we know where we have come from, we will better attend to where we are going. As Alaska grapples with an unprecedented pandemic and increasing fiscal instability, let us all take a moment to remember the actions and efforts that shaped the state we are today and focus on the state we wish to become.

SENATOR BEGICH explained that Vic Fischer and Jack Coghill were being honored because despite their different political

perspectives, they were able to work together on the shared goal of bettering the state. He welcomed questions from the committee.

[3:12:03 PM](#)

REPRESENTATIVE EASTMAN pointed out that the bill would recognize 2 of the 55 constitutional delegates. He asked whether the bill sponsor would object to including "a recommendation to the state" to honor all 55 delegates.

SENATOR BEGICH pointed out that the bill had prompted senators to acknowledge the other 53 delegates by name on the Senate floor and in committee. He believed that the proposed legislation would encourage further questions and discussion about Alaska's constitutional delegates. He said he understood the intent of Representative Eastman's question; however, the statute would not lay out provisions for how to execute or celebrate this holiday - it would simply name the commemorative day. He encouraged the representatives to recognize the other 53 delegates by name should the bill arrive on the House floor.

[3:14:39 PM](#)

REPRESENTATIVE EASTMAN questioned why Jack Coghill and Vic Fisher were specifically named.

SENATOR BEGICH reiterated that both individuals came from very different perspectives. Nonetheless, because of their shared experienced with the Constitution of the State of Alaska, they exemplified how two people with different ideologies could work together.

[3:15:39 PM](#)

REPRESENTATIVE STORY asked whether Alaska Constitution Day would be a commemorative or legal holiday and how it would affect state employees.

SENATOR BEGICH explained that CSSB 28(STA) ensured that April 24 would be a commemorative holiday, as opposed to a legal holiday. He believed that establishing a commemorative holiday was critical due to the fiscal impact of legal holidays. He further noted that commemorative holidays were identified under AS 44.12.

[3:17:41 PM](#)

REPRESENTATIVE EASTMAN moved to adopt Conceptual Amendment 1 to CSSB 28(STA), such that "and all of Alaska's constitutional delegates" would be inserted after "Vic Fischer" on page 1, line 7.

REPRESENTATIVE CLAMAN objected for the purpose of discussion.

[3:18:20 PM](#)

SENATOR BEGICH suggested adding a comma in between "Vic Fischer" and "and all of Alaska's constitutional delegates"; thus reading "Vic Fischer, and all of Alaska's constitutional delegates". He believed that the conceptual amendment captured the spirit of the bill's intent and encouraged the committee to consider it.

REPRESENTATIVE EASTMAN agreed on the insertion of the comma.

[3:19:06 PM](#)

REPRESENTATIVE CLAMAN withdrew his objection and suggested leaving the grammatical decisions to Legislative Legal Services. Without further objection, Conceptual Amendment 1 was adopted.

CHAIR KREISS-TOMKINS echoed Representative Claman's comments regarding Legislative Legal Services having the prerogative to incorporate the necessary conforming changes into bill.

SENATOR BEGICH noted the significance of debating a conceptual amendment and a comma while sitting in the committee room named after Max Gruenberg.

CHAIR KREISS-TOMKINS concurred.

[3:20:31 PM](#)

CHAIR KREISS-TOMKINS opened invited testimony.

[3:20:49 PM](#)

VICTOR FISHER said SB 28 was a good bill that would serve an important purpose. He recalled speaking about the constitution to many high school and college students throughout his lifetime. He believed that the proposed legislation would encourage people to understand their constitutional rights. He reiterated his strong support for the bill and commended the committee for promoting the idea.

[3:23:07 PM](#)

REPRESENTATIVE CLAMAN thanked Mr. Fischer for his continued participation in the democratic process and his long commitment to Alaska.

REPRESENTATIVE STORY thanked Mr. Fischer for his work years ago, which still lived on today. She said it was an honor to hear him testify before the committee.

REPRESENTATIVE TARR noted how special it was for legislation to receive recognition from someone who helped frame Alaska's constitution. She thanked Mr. Fischer for testifying.

SENATOR BEGICH shared that Mr. Fischer was one of his mentors. He recalled working for him on campaign finance reform work in 1983. Personally, he said, this came "full circle."

[3:24:54 PM](#)

CHAIR KREISS-TOMKINS noted the importance of having one of Alaska's founding fathers share his perspective. Additionally, he acknowledged the extraordinary life Mr. Fischer had lived. He opened public testimony. After ascertaining that no one wished to testify, he closed public testimony.

REPRESENTATIVE EASTMAN noted that on April 24, the people of Alaska voted to approve the constitution; therefore, he believed that selecting April 24 as a commemorative holiday was an appropriate choice in their honor - not to take away from the hard work of the delegates.

[3:27:19 PM](#)

REPRESENTATIVE CLAMAN moved to report CSSB 28(STA), as amended, out of committee with individual recommendations and the accompanying fiscal notes. Without objection, HCS CSSB 28(STA) was moved from the House State Affairs Standing Committee.

^#hjr7

HJR 7-CONST. AM: PERM FUND & PFDS

[3:27:59 PM](#)

CHAIR KREISS-TOMKINS announced that the next order of business would be HOUSE JOINT RESOLUTION NO. 7, Proposing amendments to

the Constitution of the State of Alaska relating to the Alaska permanent fund, appropriations from the permanent fund, and the permanent fund dividend.

CHAIR KREISS-TOMKINS opened public testimony.

[3:29:10 PM](#)

BERT HOUGHTALING, noted that aside from representing himself, he represented 4,000 Alaskans. He stated his opposition to HJR 7, as it would not protect the statutory PFD. He believed that the resolution would make it easier for legislators to spend money on the [operating] and capital budget while disregarding the dividend. He claimed that every Alaskan who had filed for a PFD would be against this proposal "if they were to actually understand what is written in it." He urged the committee members to oppose HJR 7 and continued by expressing his support for SJR 1.

[3:32:17 PM](#)

REPRESENTATIVE TARR inquired about the 4,000 Alaskans that Mr. Houghtaling represented.

MR. HOUGHTALING said he ran a "news organization page" with a largely Alaskan following.

[3:33:16 PM](#)

REPRESENTATIVE CLAMAN sought to clarify whether Mr. Houghtaling claimed to represent all Alaskans who received a PFD or just the Alaskans who follow his publication.

MR. HOUGHTALING replied, "I personally represent 650,000 Alaskans that receive their dividend because most of them don't even know this committee hearing is even happening right now." He clarified that the individuals he truly represented were the 4,000 people who followed his publication directly.

REPRESENTATIVE CLAMAN noted that as one of the 650,000 Alaskans that received a dividend, Mr. Houghtaling did not represent him.

[3:34:09 PM](#)

CHAIR KREISS-TOMKINS closed public testimony.

[HJR 7 was held over.]

^#hb73

HB 73-PERM FUND; ADVISORY VOTE

[3:34:13 PM](#)

CHAIR KREISS-TOMKINS announced that the next order of business would be HOUSE BILL NO. 73, "An Act relating to use of income of the Alaska permanent fund; relating to the amount of the permanent fund dividend; relating to the duties of the commissioner of revenue; relating to an advisory vote on the permanent fund; providing for an effective date by repealing the effective date of sec. 8, ch. 16, SLA 2018; and providing for an effective date."

CHAIR KREISS-TOMKINS opened public testimony.

[3:34:34 PM](#)

ADAM HYKES said he appreciated the advisory note in this piece of legislation, which would put it before the Alaskan voters. He informed the committee that he would be a "no" vote if this ever made it on the ballot. Further, he expressed his opposition to the proposed 50/50 split on the already 75/25 split on Alaskan royalties. He shared his understanding that the word "appropriation" in the bill suggested a legislative budgetary appropriation, which he believed was extremely far from Governor Hammond's intent for the PFD. He opined that "what had been done" to the PFD was completely unfair without a vote of the people. He added that he specifically objected to replacing "corporations shall transfer" with "legislature may appropriate" in Section 2 on page 2, as if it were [the legislature's] money to begin with, he said. He recommended that "the legislature may appropriate" should be deleted from the bill language entirely.

[3:37:31 PM](#)

CHAIR KREISS-TOMKINS closed public testimony and indicated that HB 73 was held over.

^#hb124

HB 124-FILLING VACANCY IN LEGISLATURE

[3:38:06 PM](#)

CHAIR KREISS-TOMKINS announced that the next order of business would be HOUSE BILL NO. 124, "An Act relating to filling a vacancy in the legislature by appointment."

3:38:31 PM

REPRESENTATIVE BEN CARPENTER, Alaska State Legislature, prime sponsor, introduced HB 124. He noted that the impetus for the bill developed last summer when former Representative Gary Knopp passed away. He paraphrased the sponsor statement [included in the committee packet], which read as follows [original punctuation provided]:

Currently ambiguity exists in AS 15.40.320 regarding the time frame and exceptions in filling vacancies within 30 days.

HB124 clarifies this language pertaining to the vacancy appointment to the Alaska State Legislature. Since statehood Alaskan have gone without representation in this body 21 times for a cumulative impact of over 1,615 days.

While the current language clearly indicates that "when a vacancy occurs in the state legislature, the governor, within 30 days, shall appoint a qualified person to fill the vacancy." The next sentence provides exceptions and creates the ambiguity. HB124 look to articulate in a more direct manor and provide additional guidance as to when.

HB124 adds the additional language "within 30 days after the vacancy occurs:". This will limit the requirement to fill the vacancy when it will no longer be necessary or prudent due to incoming electorates.

HB124 separates for the purpose of clarity language that only pertains to the other body.

REPRESENTATIVE CARPENTER elaborated that the statute in question [AS 15.40.320] contained two exceptions and a qualifying statement to the governor's 30-day appointment requirement. The first exception, he said, referred to the expiration of the remainder of the predecessor's term; the second exception referred to Senate vacancies filled by special election; and the qualifying statement referred to the legislature meeting, convening, or reconvening. He maintained that the ambiguity was

based on individual interpretation and whether the qualifying statement referred to both exceptions. He recalled that Governor Dunleavy did not appoint a replacement for District 30 [Representative Knopp's district] because he claimed to lack the authority to make the appointment because the term of office would have expired before the next legislature met, convened, or reconvened. He opined that the qualifying statement should only apply to the second exception, as its impact on the first exception would negate the first requirement to fill the vacancy within 30 days. He said it could be argued that the vacancy appointment provision was intended to ensure representation during legislative session; however, that interpretation would "not in the best interest of the people and is counter to our representative form of government," he contended. He reasoned that the framers of Alaska's government intended for continuous representation from each district in the legislature. He explained that HB 124 would provide clarity by restructuring the statute and adding the language "within 30 days after the vacancy occurs:" to communicate that the exception to the 30-day requirement would only apply to appointments wherein the predecessor's term would expire within those 30 days. The additional language would result in a requirement for the governor to submit a vacancy appointment within 30 days unless the vacancy occurred within the 30 days preceding the start of the first session of the new legislature.

[3:43:32 PM](#)

RICHARD BEST, Staff, Representative Ben Carpenter, on behalf of Representative Carpenter, prime sponsor, presented a sectional analysis of HB 124, which read as follows [original punctuation provided]:

Amends AS 15.40.320 Condition and time for filling vacancy by appointment.

Deletes language (line 6-10) If the remainder of the term of the predecessor in office will expire or if a vacancy in the state senate will be filled by a special election before the legislature will next meet, convene, or reconvene,

Adding language (Line 10) if.

Adding sub-section 1 (line 11-12): The remainder of the term of the predecessor in office will expire within 30 days after the vacancy occurs; or.

Adding sub-section 2 (line 13-14): A vacancy in the state senate will be filled by a special election before the legislature will next meet, convene, or reconvene.

[3:44:23 PM](#)

REPRESENTATIVE EASTMAN inquired about the bill sponsor's intent regarding a situation in which an elected legislator resigned in the last 30 days of his/her term.

REPRESENTATIVE CARPENTER said it would be acceptable to continue without representation for those 30 days due to the statutory exception. He believed that HB 124 would provide greater clarity for such a circumstance. He explained that if HB 124 were to pass, there wouldn't be an appointment within those 30 days and a new legislator who was duly elected would be seated [to fill the vacancy] "with the process of the new legislature."

[3:45:45 PM](#)

REPRESENTATIVE EASTMAN clarified that the scenario he had envisioned was one in which a new legislator could not be seated "because the elected legislator is not available - the term of office, because [indisic.] expire in 30 days, so you're not able to appoint anyone, so you literally have to wait until the time expires and then on that first day of the session, you can, perhaps, then appoint someone." He questioned the benefit of the 30-day exception.

REPRESENTATIVE CARPENTER supposed that the 30-day exception would not be necessary if the mechanics of appointments were as simple as the governor picking a name. However, he contended that in reality, the process was slow and onerous. He indicated that the 30-day exception was intended to provide more flexibility for those unexpected and less-than-ideal scenarios.

[3:47:41 PM](#)

REPRESENTATIVE CLAMAN shared his understanding that the 30-day requirement was a practical timeframe for the governor to gather and submit names. He reasoned that the governor couldn't be asked the fill a vacancy if there was only 30 days left. He asked whether Representative Carpenter agreed with that analysis.

REPRESENTATIVE CARPENTER concurred. He believed that there should be no statutory interpretation that would allow the governor to wait 171 days to submit an appointment, which occurred in the instance of Representative Knopp's vacancy.

REPRESENTATIVE CLAMAN questioned why someone from Kenai didn't sue the governor for failing to make an appointment within 30 days after Representative Knopp's passing. He believed that would have resolved the statutory ambiguity in question.

[3:49:11 PM](#)

REPRESENTATIVE CARPENTER was unsure why no one sued the governor. He surmised that there had been other pressing matters to attend to regarding the COVID-19 crisis. Further, he said he represented a conservative district that disliked taking legal action.

[3:49:48 PM](#)

REPRESENTATIVE CLAMAN recalled Representative Carpenter's earlier statement regarding the "clear intent" from the framers of Alaska's representational form of government for continuous representation from each district in the legislature. He asked where that intent was specified in the framer's document.

REPRESENTATIVE CARPENTER directed attention to AS 15.40.320, which indicated that the governor shall appoint a qualified person to fill a vacancy when one occurs in the legislature. He believed that the statutory language suggested that vacancies should be filled under normal circumstances. He continued by emphasizing that since statehood, vacancy appointments had been delayed 21 times. He believed that when a vacancy lasted longer than 30 days there was something wrong with the process, as Alaskans were without representation during that time.

[3:52:00 PM](#)

REPRESENTATIVE CLAMAN, returning to statement regarding "clear intent," sought to verify that Representative Carpenter was referring to the legislature's intent in passing this statute as opposed to the framer's intent in drafting the constitution.

REPRESENTATIVE CARPENTER confirmed he was referring to whoever created the statute.

[3:52:31 PM](#)

REPRESENTATIVE CLAMAN informed the committee that the legislature established the statute in 1960. He referred to a letter from Legislative Research Services [included in the committee packet], which contained a table of appointments made to fill vacancies in the Alaska State Legislature that occurred more than 30 days after a death or resignation. In these instances, he asked whether the governor had failed to comply with the 30-day requirement or whether the governor had complied, and the legislature had taken longer to fill the vacancies.

[3:53:52 PM](#)

REPRESENTATIVE CARPENTER said there were undoubtedly many different reasons for delays in the process throughout history. He clarified that each instance may not have been remedied by the proposed legislation.

REPRESENTATIVE CLAMAN asked how many times the governor had failed to meet the 30-day requirement aside from Representative Knopp's replacement.

REPRESENTATIVE CARPENTER deferred to Mr. Best.

[3:55:03 PM](#)

MR. BEST stated explained that the highlighted numbers on the table indicated that "the governor had appointed somebody and when they had either accepted or not accepted as well."

CHAIR KREISS-TOMKINS pointed out that based on the provided information, it would be possible to parse out how many instances the governor was the dilatory factor.

REPRESENTATIVE CLAMAN opined that regarding data provided by Legislative Research Services, further analysis of when the governor had or had not complied with the 30-day requirement would be helpful.

CHAIR KREISS-TOMKINS agreed. He said the requested information would provide a better sense of the scope of the precedent.

[3:56:43 PM](#)

REPRESENTATIVE TARR pointed out that Representative Knopp's vacancy occurred during the pandemic. She questioned whether it

was an appropriate example, as pandemic-related factors could have significantly influenced or hindered the appointment process.

REPRESENTATIVE CARPENTER believed that the delay was not COVID-related. Nonetheless, he pointed out that it could be argued that all decisions made in 2020 were impacted by the pandemic. He said the proposed legislation would not materially change the statute; instead, it would clarify that the 30-day requirement must be followed by the governor unless one of the allowable exceptions applied. Further, it would specify that an appointment would not have to be made within 30 days if the vacancy occurred 30 days prior to session, as the situation would resolve itself.

[3:59:25 PM](#)

REPRESENTATIVE TARR directed attention to the language on page 1, line 10, "the governor may not fill the vacancy if". She questioned whether the term "may" was the impetus for the governor's interpretation of the statute. Additionally, she asked whether "may" should be replaced by "shall" to make the exemptive language more proscriptive.

REPRESENTATIVE CARPENTER noted that he had asked Legislative Legal Services the same question regarding "may" versus "shall." He relayed that the term "may" was adequately prohibitive.

CHAIR KREISS-TOMKINS noted that Megan Wallace, Legislative Legal Services, was available for questions.

REPRESENTATIVE TARR asked for a legal interpretation of the sequence of events surrounding Representative Knopp's vacancy.

[4:01:17 PM](#)

MEGAN WALLACE, Director, Legislative Legal Services, shared her understanding that AS 15.40.320 had a long-standing interpretation that the exception in the existing statute provided that the governor may not fill the vacancy if the term of the predecessor would be filled before the legislature meets, convenes, or reconvenes. Therefore, it was the governor's similar interpretation that he was prohibited by statute from filling that vacancy because Gary Knopp's term would have expired before the legislature met, convened, or reconvened. She explained that if a special session had been called, for example, the governor could have made an appointment to fill the

vacancy at that time in preparation for the legislature convening or reconvening. She added that the statute as written, was not consistent with the bill sponsor's intent. Thus, the sponsor's changes to the statute would clarify the sponsor's intention that the governor make the appointment within 30 days - the only exception being if the term was set to expire within 30 days of the next session. She anecdotally reported that the current interpretation of the existing statute was that it was intended to potentially prevent the governor from appointing an incumbent before an election were to occur; alternatively, if the legislature were not to convene again before the term expired, the appointee wouldn't be able to sit on an interim committee or otherwise participate because appointment to a committee would require action by the body.

REPRESENTATIVE TARR noted that the provision in the constitution read "a vacancy in the legislature shall be filled for the unexpired term as provide by law. If no provision is made the governor shall fill the vacancy by appointment." She opined that there should not be these reoccurring periods in which Alaskans are without representation.

[4:05:08 PM](#)

CHAIR KREISS-TOMKINS asked whether the bill sponsor had communicated with the governor's office about the governor's interpretation of the existing statute around the time of Representative Knopp's passing.

REPRESENTATIVE CARPENTER answered no.

CHAIR KREISS-TOMKINS asked whether the bill sponsor had considered it.

REPRESENTATIVE CARPENTER answered no. He pointed out that the requirement for filling a vacancy was stipulated in both the constitution and statute; therefore, he didn't feel it necessary to ask the governor why he had not made the appointment. He added that the governor's public statements on the matter sufficed.

[4:08:05 PM](#)

MS. WALLACE, in response to a question from Representative Vance, conveyed that given the long-standing interpretation of the existing statute, the proposed legislation would clarify the ambiguity if there was a desire to ensure that the governor made

an appointment within 30 days regardless of when the legislature would convene or reconvene. In terms of informally polling members for convening a special session, there would be a vacancy in that district and the vacant position wouldn't be polled, she said. She believed that scenario posed by Representative Vance was not specifically related to the bill.

[4:09:59 PM](#)

REPRESENTATIVE VANCE considered a scenario in which there was a vacancy and the legislature called itself into special session within one week. She asked whether under existing statute, the governor would still have to comply with the 30-day requirement or whether the governor would have to fill that vacancy within the time that the legislature convened the special session.

MS. WALLACE said that issue was not specifically provided for in the current statute; however, based on passed precedent, she presumed that the governor would move quickly to ensure that an appointment was made before the special session. She explained that predicting the result of a hypothetical dispute over the timing before a special session was difficult because the statute had never been litigated.

[4:11:50 PM](#)

CHAIR KREISS-TOMKINS questioned whether Representative Carpenter had given any thought to the ambiguity in the statutes pertaining to legislative confirmations.

REPRESENTATIVE CARPENTER explained that in the midst of the research process, he had identified a previous legislator who had put forward a similar bill with a broader scope. Nonetheless, he said given the difficulty of advancing legislation, the proposed legislation was simplified to one issue.

CHAIR KREISS-TOMKINS asked which former representative had proposed similar legislation.

REPRESENTATIVE CARPENTER answered Representative Mark Hodgins [1997-1998].

[4:14:11 PM](#)

REPRESENTATIVE EASTMAN pointed out that Article 2, Section IV, of the constitution indicated that special sessions may be

called by the governor or by two-thirds of the legislators. HE sought to clarify whether "of the legislators" referred to sitting legislators.

MS. WALLACE answered yes. She added that it's likely referring to two-thirds of all 60 legislators, as opposed to two-thirds of those whose seats are filled. She recalled that regardless of whether there was an open seat, a vote would still be calculated on total membership.

[4:15:34 PM](#)

REPRESENTATIVE EASTMAN surmised that the second exception in the statutory language, which specified that a vacancy in the Senate would be filled by a special election before the legislature would next meet, convene, or reconvene, could yield a significantly longer delay. He questioned whether there was a way to amend the language to avoid the possibility of having a 250-day vacancy in the Senate.

REPRESENTATIVE CARPENTER supposed that there could be a way to "tighten" the language; however, it was not something that he had considered addressing in this bill. Furthermore, as a member of the House, he said he strayed away from pursuing a change that would impact the Senate.

[4:17:29 PM](#)

REPRESENTATIVE EASTMAN speculated that if vacancies in both the House and the Senate occurred simultaneously, the governor would not be able to fill the vacancy in the House due to the "or" language [at the end of paragraph (1) on page 1, line 12].

REPRESENTATIVE CARPENTER deferred to Legislative Legal Services.

MS. WALLACE asked Representative Eastman to repeat the question.

REPRESENTATIVE EASTMAN remarked:

The operative language on line 10 is 'the governor may not fill the vacancy [if]' and we're not distinguishing there whether the vacancy is a House or a Senate vacancy and then we add qualifying language about when he cannot fill the vacancy, and we have option one or option two. ... it would seem to me that if there is a Senate vacancy which is caught up under option 2 and we have in that same window of time

a House vacancy, that even though maybe the intent right now is that the House vacancy wouldn't get caught up - the 'or' language could potentially mean that the House vacancy is caught up with the Senate vacancy.

MS. WALLACE read paragraph one and two as not dependent on one another. She said if both a House and a Senate vacancy were to occur at the same time, it would depend on which paragraph was operable to control the scenario. She surmised that a Senate vacancy, for example, could fit the parameters of paragraph (1) and other vacancies could fit the parameters of paragraph (2). She said the "or" would allow for whichever provision was applicable to control the circumstances of the vacancy.

[4:21:31 PM](#)

REPRESENTATIVE EASTMAN asked whether there was language that could be introduced to clarify that the language in paragraph (2) would not allow the governor to neglect filling a vacancy in the House.

MS. WALLACE said she would be happy to work on that if there was a desire to clarify the language in question.

REPRESENTATIVE EASTMAN asked whether during the confirmation process, a vacancy should be filled by the legislators who were elected at the same as the representative who vacated or whether there was a benefit to waiting to confirm the appointee by the next class of legislators.

REPRESENTATIVE CARPENTER acknowledged that under the existing language, it wasn't clear. He noted that the language in the proposed legislation would have clarified that if the vacancy was within the 30 days prior to the start of the next legislature, the governor would not make an appointment. Further, whoever was elected come the start of the next legislative cycle, would fill the vacant seat. He expressed his hope that HB 124 would clarify any existing ambiguity that had troubled prior legislatures.

[4:26:11 PM](#)

REPRESENTATIVE EASTMAN inquired about limiting the governor's ability to appoint someone before an election. Alternatively, if the governor were allowed to make the appointment, he asked

whether it would be valuable to provide the governor with the discretion to choose not to make the appointment.

REPRESENTATIVE CARPENTER deferred to the constitution. He opined that representation was of the highest order; therefore, it did not make sense to him to add statutory language that would allow the governor not to appoint someone, as every district should be represented in the legislature.

[4:28:56 PM](#)

REPRESENTATIVE VANCE inquired about the procedure for filling a vacancy left by an unaffiliated member.

MS. WALLACE said that scenario is provided for under statute.

CHAIR KREISS-TOMKINS expressed interest in addressing that statutory language in a future bill hearing.

[4:30:27 PM](#)

CHAIR KREISS-TOMKINS announced that HB 124 was held over.

[4:31:00 PM](#)

The committee took an at-ease from 4:31 p.m. to 4:34 p.m.

^#hb142

HB 142-PFD ELIGIBILITY

[4:44:59 PM](#)

CHAIR KREISS-TOMKINS announced that the next order of business would be HOUSE BILL NO. 142, "An Act relating to eligibility for the permanent fund dividend." [Before the committee was CSHB 142(JUD).]

[4:45:46 PM](#)

REPRESENTATIVE KEN MCCARTY, Alaska State Legislature, prime sponsor of HB 142, provided brief introductory remarks.

[4:46:22 PM](#)

CHAIR KREISS-TOMKINS opened public testimony.

[4:47:12 PM](#)

BERT HOUGHTALING stated, "From what I've heard of this particular bill, I'm not too much against what is being done." He understood that the bill would make it easier for those working out of state to file for their PFD, as well as further clarify the eligibility criteria for the PFD. He said if that was correct do, then he was supportive of the proposed legislation. He concluded by addressing HB 73 and HJR 7.

[4:49:43 PM](#)

NOLAN HEATH informed the committee that he was a Vietnam veteran. He believed that service members who were assigned to a base outside of Alaska should not be eligible for a dividend even if they maintained residency in Alaska. However, if those service members returned to Alaska, they should be allowed to reestablish their eligibility, he opined.

[4:51:50 PM](#)

CHAIR KREISS-TOMKINS closed public testimony.

[4:52:12 PM](#)

CHAIR KREISS-TOMKINS referenced a letter from the Department of Revenue (DOR), dated 4/28/21 [hard copy included in the committee packet], which provided responses to questions asked in the House Judiciary Committee. The third paragraph on page 1 specified that AS 43.23.008 and 15 AAC 23.163 contained the language allowing snowbirds to be absent from Alaska for up to 180 days. He asked why the 180-day threshold was placed in regulation as opposed to statute. Further, he questioned whether DOR could theoretically increase or decrease that threshold through the regulatory process.

[4:53:54 PM](#)

BOBBI SCHERRER, Appeals Manager, Permanent Fund Dividend Division, Department of Revenue, stated that from 1999 to 2003, the language was found under AS 43.23.008(13)(A); however, in 2004, the statute was changed to its present form. Regarding his second question, she offered to follow up with the requested information.

[4:54:53 PM](#)

CHAIR KREISS-TOMKINS questioned whether a piece of legislation removed that language from law in 2004.

MS. SCHERRER said she did not know and offered to follow up with the requested information.

CHAIR KREISS-TOMKINS expressed his surprise that this policy was in regulation rather than statute.

[4:55:37 PM](#)

REPRESENTATIVE MCCARTY clarified that the 180-day threshold was presently in statute. He opined that increasing the length of allowable absence for snowbirds could affect the economy if they chose to remain in another state for a longer amount of time.

CHAIR KREISS-TOMKINS noted that his predilection would be to tighten the limit so that people would need to spend a "strong majority" of the year in Alaska in order to qualify for eligibility.

[4:56:52 PM](#)

The committee took a brief at-ease.

[4:59:00 PM](#)

CHAIR KREISS-TOMKINS thanked Representative Tarr for directing his attention to several statutes during the at-ease.

[4:59:09 PM](#)

REPRESENTATIVE VANCE referenced page 1, paragraph 4 of the letter from DOR, which indicated that the repeal of AS 43.23.0005(a)(4), AS 43.23.005(f), and AS 43.23.008(e), per Section 3 of CSHB 142(JUD), would increase the number of eligible applicants each year that were absent on allowable absences under AS 43.23.008(a). She inquired about any unintended consequences that may occur as a result of the repeal language in Section 3. Further, she the bill sponsor to speak to his intent.

[5:01:09 PM](#)

REPRESENTATIVE MCCARTY said the intent of the bill was to make PFD eligibility equitable. He added that "not everybody gets to move from the state and keep collecting the Permanent Fund

Dividend." He explained that military members had been allowed to leave the state with the intent to return while still collecting their PFD; however, that intent was not always fulfilled. He added that other people may have had the intent to leave Alaska and return but they not were not allowed the same privilege. Therefore, the intent of the proposed legislation was to ensure that the dividend was being disbursed to people residing in the state, he indicated.

[5:02:42 PM](#)

REPRESENTATIVE VANCE said she would like to hear from both Legislative Legal Services and DOR to ensure that there was consistent interpretations of the repeal language and its potential ramifications.

EMILY NAUMAN, Deputy Director, Office of the Director, Legislative Legal Services, asked Representative Vance to repeat the question.

[5:03:05 PM](#)

REPRESENTATIVE VANCE directed attention to the repeal language in Section 3 of CSHB 142(JUD). She inquired about the full impact of that language, as DOR had indicated that repealing those statutes would apply to all allowable absences under AS 43.23.008(a) and that the division would apply the law consistently and uniformly.

MS. NAUMAN said currently, a person was allowed to be absent for the reasons listed under AS 43.23.008; however, AS 43.25.005 required eligible individuals to have been present in the state for at least 72 consecutive hours during the prior two years before the current dividend year even if they claimed an allowable absence. She stated that the proposed legislation would repeal that requirement, so if people were out of state on an allowable absence, they would no longer be required to prove they had returned to Alaska for at least 72 consecutive hours.

[5:05:20 PM](#)

REPRESENTATIVE EASTMAN surmised that the repeal language would change the annual number of eligible applicants. He questioned whether that overall number would increase or decrease.

MS. SCHERRER stated that because the repeal of AS 43.23.005(a)(4) would impact all allowable absence types [under

AS 43.23.008(a)], the 14,500 individuals who were claiming an allowable absence would no longer be required to prove they had returned to Alaska for 72 consecutive hours to prove their intent.

5:06:50 PM

REPRESENTATIVE EASTMAN asked how many individuals would be eligible to receive a dividend should the bill pass.

MS. SCHERRER reported that of the 14,500 individuals claiming an allowable absence, 2,000 were denied for non-response or failure to provide proof of physical presence in the state for at least 72 consecutive hours. She explained that those 2,000 people would become eligible if the bill were to pass, while the remaining 12,500 would maintain eligibility, but would no longer be required to provide that proof.

5:08:28 PM

REPRESENTATIVE EASTMAN asked how many military members would be denied eligibility if the bill were to pass.

MS. SCHERRER said the Permanent Fund Division (the division) was not able to break down the figures by type of absence.

CHAIR KREISS-TOMKINS sought to clarify whether the repealing the 72-hour requirement would reduce the number of eligible applicants by 12,500.

MS. SCHERRER stated that the number of active-duty military members who would no longer be eligible for the PFD would amount to 10,000 per year.

5:11:45 PM

CHAIR KREISS-TOMKINS sought to clarify what the 14,500-figure corresponded to.

MS. SCHERRER restated that 14,500 was the number of individuals per year who claimed an allowable absence under AS 43.23.009(a)(1-16) and were required to prove they had returned to Alaska for at least 72 consecutive hours.

5:12:18 PM

REPRESENTATIVE EASTMAN asked how long a person could be absent from the state for education or training purposes under the proposed legislation.

MS. SCHERRER said the bill would not change the other allowable absence types. She directed attention to AS 43.23.008(d), which specified that people who had been absent from the state for more than 180 days in each of the five preceding qualifying years must prove that they had been physically present in the state for at least 30 cumulative days during the past five years to maintain residency in Alaska through the PFD program.

[5:13:40 PM](#)

REPRESENTATIVE EASTMAN asked how long a military member could be absent from Alaska.

MS. SCHERRER said the proposed legislation would require that the service member be absent on deployment or a temporary duty assignment. She believed that there was no specific time limit if a military member was absent for either of those reasons; however, like the other allowable absences, a temporary duty assignment or deployment would still have to comply with AS 43.23.008(d).

REPRESENTATIVE EASTMAN asked the bill sponsor how long a service member on military deployment or temporary duty travel (TDY) could be absent for.

REPRESENTATIVE MCCARTY said it would depend on the military's discretion. He explained that if an individual was deployed for several years while based out of Alaska, that person would still be eligible.

[5:15:35 PM](#)

REPRESENTATIVE EASTMAN inquired about an astronaut's eligibility if he/she was in space.

REPRESENTATIVE MCCARTY contemplated whether the National Aeronautics and Space Administration (NASA) would be categorized as military.

[5:17:26 PM](#)

REPRESENTATIVE STORY asked whether Department of Military & Veterans' Affairs (DMVA) had expressed concern about the 10,000

military members who would lose eligibility if the bill were to pass.

REPRESENTATIVE MCCARTY relayed that the Veterans of Foreign Wars (VFW) and American Legion believed that if people had left Alaska, they should no longer receive a dividend.

REPRESENTATIVE STORY was concerned that the National Oceanic and Atmospheric Administration (NOAA) Commissioned Officer Corps and the U.S. Public Health Service (USPHS) Commissioned Corps had not been allowed to receive a PFD. She expressed interest in proposing a future amendment that would remedy that.

[5:20:12 PM](#)

REPRESENTATIVE MCCARTY said he shared that concern and welcomed further discussion on the issue. He understood that eligibility was addressed under AS 43.23.005.

REPRESENTATIVE STORY expounded that she was concerned about Alaskan residents who served in the NOAA Commissioned Officer Corps and USPHS Commissioned Corps. She believed that they should qualify to receive a dividend despite being absent on long periods of service.

CHAIR KREISS-TOMKINS directed attention to 43.23.008(a)(1), which was the allowable absence for receiving secondary or postsecondary education on a full-time basis. He asked whether that would include graduate school.

MS. SCHERRER answered yes, a person in graduate school would fall under that category.

CHAIR KREISS-TOMKINS asked how many individuals qualified for that allowable absence.

MS. SCHERRER offered to follow up with the requested information.

CHAIR KREISS-TOMKINS requested a list of how many people qualified under each respective allowable absence [AS 43.23.08(a)(1-16)].

[5:23:38 PM](#)

CHAIR KREISS-TOMKINS asked what proportion of allowable absences claimed under AS 43.23.008(a)(1) were for graduate school or

something other than undergraduate, vocational, or technical education.

MS. SCHERRER believed that the majority of individuals claiming that allowable absence were four-year college students.

[5:24:22 PM](#)

REPRESENTATIVE KAUFMAN asked whether there was a "tabular version of conformance" that was used in managing this data that could be provided to the committee.

MS. SCHERRER offered to follow up with the requested information.

[5:25:32 PM](#)

REPRESENTATIVE EASTMAN expressed concern that the proposed legislation would allow those claiming allowable absences, such as education, work, or the Peace Corps, for example, to be out of state for five years, but the same opportunity would not be allowed for service members. He believed the bill was preferencing other service over military service. He questioned whether that could be more equitable.

REPRESENTATIVE MCCARTY welcomed a friendly amendment that would address that issue.

REPRESENTATIVE EASTMAN pointed out that a military member may have a harder time fulfilling the requirement under AS 43.23.008(d)(1), which would allow an individual who was absent for five years to show proof that they had been present in the state for at least 30 cumulative days. He reiterated his concern that service members could be at a disadvantage.

[5:28:46 PM](#)

CHAIR KREISS-TOMKINS reopened public testimony.

[5:29:03 PM](#)

LATRICE WILLIAMS informed the committee that she was a prior active-duty military member who had been stationed in Alaska. She believed that only people who physically resided in Alaska should be eligible for the PFD. Additionally, service members who were stationed in Alaska for three years, for example, should also be eligible. She maintained her belief that service

members who were assigned to a different location outside of Alaska should lose their eligibility.

[5:30:46 PM](#)

CHAIR KREISS-TOMKINS closed public testimony and announced that HB 142 was held over.

^#hb5

HB 5-SEXUAL ASSAULT; DEF. OF "CONSENT"

[5:31:33 PM](#)

CHAIR KREISS-TOMKINS announced that the final order of business would be SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 5, "An Act relating to sexual abuse of a minor; relating to sexual assault; relating to the code of military justice; relating to consent; relating to the testing of sexual assault examination kits; and providing for an effective date."

CHAIR KREISS-TOMKINS resumed the discussion on Amendment 4, which had been introduced for consideration during the previous bill hearing on 4/27/21.

[5:32:59 PM](#)

REPRESENTATIVE TARR, prime sponsor of HB 5, moved to adopt Amendment 4, labeled 32-LS0065\G.6 Radford, 4/26/21, which read:

Page 2, line 9:

Delete "**who is**"

Insert "**whom the offender has**"

Page 2, line 11, following "**person**":

Insert "**based on the offender's physical identity, not on characteristics, traits, or accomplishments of or similar facts about the offender, with reckless disregard that the person would not have consented to the sexual penetration if the person knew the offender's real identity**"

Page 2, following line 11:

Insert a new bill section to read:

"* **Sec. 2.** AS 11.41.410(b) is amended to read:

(b) Sexual assault in the first degree,

(1) under (a)(1) - (4) of this section, is
an unclassified felony and is punishable as provided
in AS 12.55;

(2) under (a)(5) of this section, is a
class A felony and is punishable as provided in AS
12.55."

Renumber the following bill sections accordingly.

Page 2, line 31:

Delete "who is"

Insert "whom the offender has"

Page 3, line 2, following "person":

Insert "based on the offender's physical
identity, not on characteristics, traits, or
accomplishments of or similar facts about the
offender, with reckless disregard that the person
would not have consented to the sexual contact if the
person knew the offender's real identity"

Page 6, line 19, following "AS 11.41.420(a), ":

Insert "AS 11.41.420(b), as amended by sec. 2 of
this Act,"

Delete "sec. 2"

Insert "sec. 3"

Delete "sec. 3"

Insert "sec. 4"

Page 6, line 20:

Delete "sec. 4"

Insert "sec. 5"

Page 6, lines 20 - 21:

Delete "sec. 5"

Insert "sec. 6"

Page 6, line 21:

Delete "sec. 6"

Insert "sec. 7"

Page 6, line 22:

Delete "sec. 7"

Insert "sec. 8"

Delete "sec. 8"

Insert "sec. 9"

Page 6, line 23:
Delete "sec. 9"
Insert "sec. 10"

Page 6, line 24:
Delete "sec. 11"
Insert "sec. 12"

Page 6, line 25:
Delete "secs. 1 - 9 and 11"
Insert "secs. 1 - 10 and 12"

Page 6, line 26:
Delete "Section 10"
Insert "Section 11"

REPRESENTATIVE EASTMAN objected for the purpose of discussion.

[5:33:13 PM](#)

REPRESENTATIVE TARR highlighted the three objectives of Amendment 4: firstly, it would clarify the language in the rape by fraud provision; secondly, it would reclassify the crime of rape by fraud from an unclassified felony to a class A felony; thirdly, it would reclassify sexual contact by fraud to a class B felony. Additionally, she said she would consider the change of "physical identity" to "actual identity" as a friendly amendment, per the committee's discussion in the previous bill hearing.

CHAIR KREISS-TOMKINS noted that he may be the "odd one out" in terms of the relative benefits of "actual" versus "physical."

[5:35:32 PM](#)

REPRESENTATIVE EASTMAN suggested replacing "physical [identity]" with "personal [identity]."

REPRESENTATIVE TARR said she would appreciate an attorney's input on the wordsmithing to avoid any unintended consequences.

[5:36:29 PM](#)

JAMES STINSON, Director, Office of Public Advocacy, Department of Administration, defined "actual" as "existing in fact," or "contrasted with what as intended, expected, or believed." He acknowledged that "actual identity" could be perceived as

relatively broad, as its meaning was somewhat all-encompassing. Further, he believed "actual identity" could be confusing, as the following language would read "not on characteristics, traits, or accomplishments," which were sometimes considered part of a person's actual identity. He added that he understood the intention behind "personal identity" too, as "personal" was generally defined as "belonging to a particular person rather than anyone else." Ultimately, he believed that "physical identity" seemed to capture the legislative intent and understood why it was initially chosen.

[5:38:51 PM](#)

REPRESENTATIVE EASTMAN remarked:

Physical identity - does it have to be a specific person that we can have a name for, or is it also a violation if it's someone they don't know versus someone they do know?

[5:40:34 PM](#)

MR. STINSON posed the following hypothetical in an attempt to clarify the question from Representative Eastman:

Would it be someone meeting online getting 'catfished' where it's somebody that actually knows them, but they're impersonating a different identity. And then there's somehow a meetup, where for some reason, they're not able to see the person and they have potential sex and then lights come on and they realize it's actually somebody known to them. Is that ... sort of what you're getting at?

REPRESENTATIVE EASTMAN said he was inquiring about situations in which the [offender] was not seen physically due to darkness, smoke, or a physical barrier, for example. He asked whether "physical" would capture a scenario where someone was intending to avoid contact with a known individual; however, after the fact, it turned out to be an individual that he/she knew.

[5:42:03 PM](#)

MR. STINSON said it would depend on the specifics of the scenario. He explained that if it was a situation in which someone was ambiguous about who they were engaging in sexual intercourse with but was otherwise consenting, [the proposed

legislation] would not capture that. He reiterated that Amendment 4 was intended for a circumstance where someone was impersonating another physical person that was known to the victim and thereby gets his/her consent.

[5:43:31 PM](#)

REPRESENTATIVE EASTMAN sought to clarify the class B felony reclassification, which did not appear to be specifically represented in the language in Amendment 4.

REPRESENTATIVE TARR said she did not understand the question.

REPRESENTATIVE EASTMAN sought to understand how the proposed amendment was reclassifying sexual contact by fraud to a class B felony.

REPRESENTATIVE TARR replied, "It should insert it into the section where it's the sexual assault in the second degree, because sexual assault in the second degree is a class B felony. And that is not otherwise ... in the bill, but that should be the place where it gets inserted in statute."

REPRESENTATIVE EASTMAN directed his previous question to a drafter from Legislative Legal Services to better understand how that reclassification was occurring within Amendment 4.

[5:45:04 PM](#)

CLAIRE RADFORD, Attorney, Legislative Legal Services, Legislative Affairs Agency, explained that Amendment 4 would insert a new Section 2 into the bill, which would make sexual penetration by fraud a class A felony. Sexual contact by fraud was in the crime of sexual assault in the second degree, which was presently a class B felony, and would not be altered by the amendment.

[5:45:35 PM](#)

REPRESENTATIVE KAUFMAN redirected the discussion back to "actual" versus "physical."

REPRESENTATIVE TARR noted that the present wording was "physical identity;" however, "true" and "real" had also been suggested. She pointed out that "real identity" was utilized on line 9 of Amendment 4.

[5:47:19 PM](#)

REPRESENTATIVE VANCE asked whether the existing language of "real identity" on line 9 and "physical identity" on line 6 would sufficiently capture the legislative intent or if further clarification was necessary.

MR. STINSON reiterated that he found comfort in the word "physical" because the legislature was not trying to make it a crime for someone to lie about his/her "real identity" or "true identity," but the legislature was trying to stop a person from impersonating another physical person that was known to the victim. He added that he would not have an issue with "real physical identity" if the committee wanted to add that qualifier on line 6.

REPRESENTATIVE TARR asked Mr. Skidmore to respond.

[5:49:41 PM](#)

JOHN SKIDMORE, Deputy Attorney General, Office of the Attorney General, Department of Law, said the challenge with all of those terms is that they had not been used in statute before. He added that he could not say whether one was necessarily better than the other. He maintained that his preference was to replace "physical" with "actual" or "real" because the legislative intent was to capture someone who was impersonating another specific person. He reiterated that ultimately, it came down to a policy call.

CHAIR KREISS-TOMKINS asked Mr. Skidmore to provide an example of a scenario that would be captured under "actual identity," which "physical identity" would not capture.

[5:51:18 PM](#)

MR. SKIDMORE said he could not come up with a specific hypothetical at this time.

CHAIR KREISS-TOMKINS asked Mr. Stinson if he could provide an example.

MR. STINSON expressed concern that "actual" could be interpreted more broadly than "physical" because someone's actual identity could be interpreted as a false name or other some other aspect. He maintained his belief that "physical" would better capture the intent, because "physical" indicated an immutable attribute

that could not be lied about because it would be immediately observable.

[5:53:44 PM](#)

REPRESENTATIVE EASTMAN asked whether someone could give consent if they had been "previously tricked" concerning the physical identity of the person that they [engaged in sexual contact] with.

MR. STINSON inquired about Representative Eastman's meaning of "previously tricked."

REPRESENTATIVE EASTMAN remarked:

Is it a black and white situation like that where if someone is told and is led to believe one physical identity and that it comes out after the fact that there was a different physical identity - is the person able to give consent in that situation? Are there some circumstances in which they can give consent and maybe others where they can't?

MR. STINSON asked for confirmation that Representative Eastman was asking about a situation in which consent was given under the false pretenses that would otherwise qualify as rape by fraud and then subsequently the person decided that he/she wanted to consent to a second act after finding out that the person was a different person. He questioned whether that captured the question accurately.

REPRESENTATIVE EASTMAN clarified that he was focused on lines 7-9 of Amendment 4. He remarked:

I'm talking about the potential victim in this situation. Are there some circumstances and situations where they could give consent because, even though the potential offender is acting with reckless disregard, they actually would have consented if they had known and not been tricked?

[5:57:03 PM](#)

MR. STINSON said the difficulty of framing rape by fraud with an affirmative consent framework was that the person did give affirmative consent, but they had been tricked. He expounded that the person would have consented to the act, but only by

fraud or deception. To the extent that the individual was undisturbed by that fraud or deception, technically the law would be violated, but there would be a question of how it would get reported or prosecuted. He reiterated that this provision would apply to the use of fraud to obtain what would otherwise be consensual sexual contact or consensual sex, but the person then realized that he/she had been duped, which was what this provision was attempting to criminalize.

[5:58:39 PM](#)

CHAIR KREISS-TOMKINS directed the discussion back to Amendment 4.

[5:59:10 PM](#)

REPRESENTATIVE VANCE moved to adopt Conceptual Amendment 1 to Amendment 4, such that the word "physical" on line 6 would be replaced with "real". She believed that it would align with the language on line 9 and be less restrictive than "physical." Further, she opined that "real identity" would better capture who the person actually was as opposed to the person's physical appearance.

CHAIR KREISS-TOMKINS objected.

[6:00:51 PM](#)

REPRESENTATIVE TARR noted that the original language that had been submitted to Legislative Legal Services contained the word "true," which the drafters replaced with "real" [on line 9 of Amendment 4].

[6:01:12 PM](#)

REPRESENTATIVE STORY questioned whether the bill sponsor was supportive of the conceptual amendment.

REPRESENTATIVE TARR said she was "okay" with it; however, she believed it would be a topic of further discussion.

CHAIR KREISS-TOMKINS said he had concerns; nonetheless, he removed his objection. Without further objection, Conceptual Amendment 1 to Amendment 4 was adopted.

[6:04:02 PM](#)

REPRESENTATIVE EASTMAN moved to adopt Conceptual Amendment 2, which would delete "is" on page 2, line 9, of SSHB 5 and insert "would not have consented if the person knew the offender's real identity, but for the fact that they were".

CHAIR KREISS-TOMKINS objected.

[6:05:33 PM](#)

REPRESENTATIVE TARR expressed her opposition to Conceptual Amendment 2, because the bill language was drafted in a specific tense and the proposed conceptual amendment would "resituate" it.

[6:06:10 PM](#)

A roll call vote was taken. Representatives Eastman voted in favor of the adoption of Conceptual Amendment 2. Representatives Tarr, Story, Vance, Kaufman, and Kreiss-Tomkins voted against it. Therefore, Conceptual Amendment 2 failed by a vote of 1-5.

[6:07:08 PM](#)

REPRESENTATIVE EASTMAN removed his objection to the adoption of Amendment 4. Without further objection, Amendment 4, as amended, was adopted.

CHAIR KREISS-TOMKINS invited final comment on HB 5.

REPRESENTATIVE EASTMAN expressed concern that should HB 5 pass, otherwise innocuous actions between two consenting adults could be later construed "in a way that was not intended."

[6:08:53 PM](#)

REPRESENTATIVE VANCE said she liked the bill but still had reservations. She committed herself to continuing the work in the next committee of referral.

CHAIR KREISS-TOMKINS emphasized the importance of addressing sexual assault. Nonetheless, he expressed concern that as amended, the rape by fraud provisions could allow for more unintended consequences, ambiguity, and prosecutorial discretion that could capture scenarios outside the legislative intent. He said he was always troubled by further steps towards mass incarceration as a solution to public safety problems.

[6:10:34 PM](#)

REPRESENTATIVE TARR agreed with the chair on the issue of long prison sentences. She recited the quote, "rape is like a murder where the victim survives," to emphasize the severity of the impact. She added that the goal was to make improvements without unintended consequences and to change the culture.

[6:12:05 PM](#)

REPRESENTATIVE VANCE moved to report SSHB 5, as amended, out of committee with individual recommendations and the accompanying fiscal notes. Without objection, CSSSHB 5(STA) was moved from the House State Affairs Standing Committee.

#

[6:12:34 PM](#)

CHAIR KREISS-TOMKINS provided closing remarks and reviewed the upcoming schedule.

[6:12:44 PM](#)

ADJOURNMENT

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 5:12 p.m.